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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,766	03/19/2004	Toshie Imai	MIPFP057.CIP	7669

7590 08/22/2007

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EXAMINER	
KHAN, USMAN A	
ART UNIT	**PAPER NUMBER**
2622	

MAIL DATE	DELIVERY MODE
08/22/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/804,766	IMAI, TOSHIE	
	Examiner	Art Unit	
	Usman Khan	2622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 July 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) *2-8,12,13,16-22,26 and 27* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,9-11,14,15,23-25,28 and 29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *19 March 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Claims 2 - 8, 12, 13, 16 - 22, 26, and 27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected species 1 - 6, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/11/2007.

Priority

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Information Disclosure Statement

The information disclosure statements (IDS) submitted on 01/31/2006 and 07/10/2006 have been considered by the examiner. The submissions are in compliance with the provisions of 37 CFR 1.97.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Double Patenting

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1, 14, 15, 28, and 29 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1, 11, 12, 22, and 23 of copending Application No. 10/665,678. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 14, 15, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Fukushima et al. (US patent No. 5,940,530).

Regarding **claim 1**, Fukushima et al. teaches an image processing device for processing an image using image data generated by an image generating device (Abstract, also column 10, lines 1 – 27), and image generation record information that is associated with the image data and that includes operation information for the image generating device at the time that the image data is generated (Column 3 lines 34 – 44; scene information determination and degree of brightness information determination; also column 10, lines 1 – 27), the image processing device comprising: a judging section configured to execute a backlight decision as to whether or not to execute backlight adjustment processing (figures 2 and 7 items 201 *et seq.* backlight evaluation and correction; also column 7 line 64 – column 8 line 27 and column 12 lines 20 *et seq.*; backlighting evaluation and brightness/luminance correction), based on both the image generation record information and the image data (column 10, lines 1 – 27); and an image quality adjuster that, when it is decided to execute the backlight adjustment processing, executes backlight adjustment processing to increase brightness value of at least some pixels in the image data (figures 2 and 7 items 201 *et seq.* backlight evaluation and correction; also column 7 line 64 – column 8 line 27 and column 12 lines 20 *et seq.*; backlighting evaluation and brightness/luminance correction).

Regarding **claim 14**, Fukushima et al. teaches an image output device for outputting an image using image data generated by an image generating device

(Abstract, also column 10, lines 1 – 27), and image generation record information that is associated with the image data and that includes operation information for the image generating device at the time that the image data is generated (Column 3 lines 34 – 44; scene information determination and degree of brightness information determination; also column 10, lines 1 – 27), the image output device comprises: a judging section configured to execute a backlight decision as to whether or not to execute backlight adjustment processing (figures 2 and 7 items 201 *et seq.* backlight evaluation and correction; also column 7 line 64 – column 8 line 27 and column 12 lines 20 *et seq.*; backlighting evaluation and brightness/luminance correction), based on both the image generation record information and the image data (column 10, lines 1 – 27); an image quality adjuster that, when it is decided to execute the backlight adjustment processing, executes backlight adjustment processing to increase brightness value of at least some pixels in the image data (figures 2 and 7 items 201 *et seq.* backlight evaluation and correction; also column 7 line 64 – column 8 line 27 and column 12 lines 20 *et seq.*; backlighting evaluation and brightness/luminance correction); and an output section for outputting an image according to the image quality-adjusted image data (Abstract and column 1 lines 11 - 13, printing of the image).

Regarding **claim 15**, Fukushima et al. teaches a method of processing an image using image data generated by an image generating device (Abstract, also column 10, lines 1 – 27), and image generation record information that is associated with the image data and that includes operation information for the image generating device at the time

that the image data is generated (Column 3 lines 34 – 44; scene information determination and degree of brightness information determination; also column 10, lines 1 – 27), the method comprising the steps of:

(a) executing a backlight decision as to whether or not to execute backlight adjustment processing, based on both the image generation record information and the image data (figures 2 and 7 items 201 *et seq.* backlight evaluation and correction; also column 7 line 64 – column 8 line 27 and column 12 lines 20 *et seq.*; backlighting evaluation and brightness/luminance correction); and

(b) when it is decided to execute the backlight adjustment processing, executing backlight adjustment processing to increase brightness value of at least some pixels in the image data (figures 2 and 7 items 201 *et seq.* backlight evaluation and correction; also column 7 line 64 – column 8 line 27 and column 12 lines 20 *et seq.*; backlighting evaluation and brightness/luminance correction).

Regarding **claim 28**, Fukushima et al. teaches a method of outputting an image using image data generated by an image generating device (Abstract, also column 10, lines 1 – 27), and image generation record information that is associated with the image data and that includes operation information for the image generating device at the time that the image data is generated (Column 3 lines 34 – 44; scene information determination and degree of brightness information determination; also column 10, lines 1 – 27), the method comprising the steps of:

(a) executing a backlight decision as to whether or not to execute backlight adjustment processing, based on both the image generation record information and the image data (figures 2 and 7 items 201 *et seq.* backlight evaluation and correction; also column 7 line 64 – column 8 line 27 and column 12 lines 20 *et seq.*; backlighting evaluation and brightness/luminance correction);

(b) when it is decided to execute the backlight adjustment processing, executing backlight adjustment processing to increase brightness value of at least some pixels in the image data (figures 2 and 7 items 201 *et seq.* backlight evaluation and correction; also column 7 line 64 – column 8 line 27 and column 12 lines 20 *et seq.*; backlighting evaluation and brightness/luminance correction); and

(c) outputting an image according to the image quality-adjusted image data (Abstract and column 1 lines 11 - 13, printing of the image).

Claims 1, 9 – 11, 15, 23 – 25, and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Uchino et al. (US PgPub 2002/0008771).

Regarding **claim 1**, Uchino et al. teaches an image processing device for processing an image using image data generated by an image generating device (figures 1 – 2, item 1), and image generation record information that is associated with the image data (paragraph 0050, 0062, and 0071) and that includes operation information for the image generating device (paragraphs 0009, 0049, and 0057) at the time that the image data is generated (0049, and 0062), the image processing device comprising: a judging section (figure 5 item 321) configured to execute a backlight

decision as to whether or not to execute backlight adjustment processing (paragraphs 0062 and 0065), based on both the image generation record information and the image data (paragraphs 0072 – 0074); and an image quality adjuster that, when it is decided to execute the backlight adjustment processing (paragraphs 0062 and 0065), executes backlight adjustment processing to increase brightness value of at least some pixels in the image data (paragraphs 0065, 0072, and 0074).

Regarding **claim 9**, as mentioned above in the discussion of claim 1, Uchino et al. teaches all of the limitations of the parent claim. Additionally, Uchino et al. teaches that the judging section performs: (i) first judgment to decide whether or not the image generation record information negates necessity of the backlight adjustment processing (figure 5 item 321 and paragraphs 0053 and 0067-0068), and (ii) second judgment, when the image generation record information does not negates the necessity of the backlight adjustment processing in the first judgment, to decide whether or not to execute the backlight adjustment processing based on a pixel value histogram of the image data (paragraph 0039 and figure 5 item 321 and paragraphs 0053 and 0067-0068).

Regarding **claim 10**, as mentioned above in the discussion of claim 9, Uchino et al. teaches all of the limitations of the parent claim. Additionally, Uchino et al. teaches that the judging section calculates a degree of similarity between the pixel value histogram and a predetermined reference histogram, and makes the second judgment

according to the degree of similarity (figure 5 item 321 and paragraphs 0053 and 0067-0068; the pixel values are metering value with the scene determination for value).

Regarding **claim 11**, as mentioned above in the discussion of claim 10, Uchino et al. teaches all of the limitations of the parent claim. Additionally, Uchino et al. teaches that the pixel value histogram and the reference histogram each have a simplified format in which a range of pixel values is divided into a plurality of segments (paragraph 0067 dividing section 322), and a representative pixel frequency value is established for each segment (paragraph 0067 – 0068 each divided section is corrected by the correcting section 26); and the degree of similarity represents similarity of the representative pixel frequency value of each segment between the pixel value histogram and the reference histogram (paragraph 0067 – 0068 each divided section is corrected by the correcting section 26; the pixel values are metering value with the scene determination for value).

Regarding **claim 15**, Uchino et al. teaches a method of processing an image using image data generated by an image generating device (figures 1 – 2, item 1), and image generation record information that is associated with the image data (paragraph 0050, 0062, and 0071) and that includes operation information for the image generating device (paragraphs 0009, 0049, and 0057) at the time that the image data is generated (0049, and 0062), the method comprising the steps of:

(a) executing a backlight decision as to whether or not to execute backlight adjustment processing (paragraphs 0062 and 0065), based on both the image generation record information and the image data (paragraphs 0072 - 0074); and

(b) when it is decided to execute the backlight adjustment processing (paragraphs 0062 and 0065), executing backlight adjustment processing to increase brightness value of at least some pixels in the image data (paragraphs 0065, 0072 and 0074).

Regarding **claim 23**, as mentioned above in the discussion of claim 15, Uchino et al. teaches all of the limitations of the parent claim. Additionally, Uchino et al. teaches that the step (a) includes: (i) performing first judgment to decide whether or not the image generation record information negates necessity of the backlight adjustment processing (figure 5 item 321 and paragraphs 0053 and 0067-0068); and (ii) performing second judgment, when the image generation record information does not negates the necessity of the backlight adjustment processing in the first judgment, to decide whether or not to execute the backlight adjustment processing based on a pixel value histogram of the image data (paragraph 0039 and figure 5 item 321 and paragraphs 0053 and 0067-0068).

Regarding **claim 24**, as mentioned above in the discussion of claim 23, Uchino et al. teaches all of the limitations of the parent claim. Additionally, Uchino et al. teaches that the step (a) further includes calculating a degree of similarity between the pixel

value histogram and a predetermined reference histogram, and making the second judgment according to the degree of similarity (figure 5 item 321 and paragraphs 0053 and 0067-0068; the pixel values are metering value with the scene determination for value).

Regarding **claim 25**, as mentioned above in the discussion of claim 24, Uchino et al. teaches all of the limitations of the parent claim. Additionally, Uchino et al. teaches that the pixel value histogram and the reference histogram each have a simplified format in which a range of pixel values is divided into a plurality of segments (paragraph 0067 dividing section 322), and a representative pixel frequency value is established for each segment (paragraph 0067 – 0068 each divided section is corrected by the correcting section 26); and the degree of similarity represents similarity of the representative pixel frequency value of each segment between the pixel value histogram and the reference histogram (paragraph 0067 – 0068 each divided section is corrected by the correcting section 26; the pixel values are metering value with the scene determination for value).

Regarding **claim 29**, Uchino et al. teaches a computer program product (paragraph 0085 and 0087) comprising: a computer readable medium (paragraph 0085); and a computer program stored on the computer readable medium (paragraph 0085), the computer program including a first program causing a computer (figure 14, item 40) to execute a backlight decision as to whether or not to execute backlight

adjustment processing (figure 19 and paragraphs 0097 – 0101), based on both the image generation record information and the image data (paragraphs 0072 - 0073); and a second program, when it is decided to execute the backlight adjustment processing (paragraphs 0062 and 0065), causing the computer to execute backlight adjustment processing to increase brightness value of at least some pixels in the image data (paragraphs 0065, 0072, and 0074).

Claims 14 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Kinjo (US patent No. 7,145,597).

Regarding **claim 14**, Kinjo teaches an image output device (figure 2 item 16) for outputting an image using image data generated by an image generating device (figure 2 item 12), and image generation record information that is associated with the image data (column 17 lines 4 – 33; item 30) and that includes operation information for the image generating device (column 4 lines 19 – 35 and column 9 lines 51 - 58) at the time that the image data is generated (column 4 lines 19 – 28 and column 8 lines 45 - 49), the image output device comprises: a judging section configured to execute a backlight decision as to whether or not to execute backlight adjustment processing (column 9 lines 59 – 67 and column 20 lines 35 – 60), based on both the image generation record information (column 20 lines 61 – 64) and the image data (column 6 lines 34 – 54); an image quality adjuster that, when it is decided to execute the backlight adjustment processing, executes backlight adjustment processing to increase brightness value of at least some pixels in the image data (column 4 lines 19 – 35; column 14 lines 18 – 34;

column 15 lines 17 – 33; and column 20 lines 35 - 64); and an output section for outputting an image according to the image quality-adjusted image data (column 10 lines 5 – 26; column 14 line 60 – column 15 line 10).

Regarding **claim 28**, Kinjo teaches a method of outputting an image (figure 2 item 16) using image data generated by an image generating device (figure 2 item 12), and image generation record information that is associated with the image data (column 17 lines 4 – 33; item 30) and that includes operation information for the image generating device (column 4 lines 19 – 35 and column 9 lines 51 - 58) at the time that the image data is generated (column 4 lines 19 – 28 and column 8 lines 45 - 49), the method comprising the steps of:

(a) executing a backlight decision as to whether or not to execute backlight adjustment processing (column 9 lines 59 – 67 and column 20 lines 35 – 60), based on both the image generation record information (column 20 lines 61 – 64) and the image data (column 6 lines 34 – 54);

(b) when it is decided to execute the backlight adjustment processing, executing backlight adjustment processing to increase brightness value of at least some pixels in the image data (column 4 lines 19 – 35; column 14 lines 18 – 34; column 15 lines 17 – 33; and column 20 lines 35 – 64); and

(c) outputting an image according to the image quality-adjusted image data (column 10 lines 5 – 26; column 14 line 60 – column 15 line 10).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Takei (US patent No. 5,353,058) teaches an exposure correction method in a camera display.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Usman Khan whose telephone number is (571) 270-1131. The examiner can normally be reached on Mon-Thru 6:45-4:15; Fri 6:45-3:15 or Alt. Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Ometz can be reached on (571) 272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Usman Khan
08/06/2007
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